IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 293/2003

RAMSWAROOP & ORS. Vs. STATE OF RAJASTHAN & ANR.

DATE: 22.02.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Anurag Sharma for the accused-petitioners.
Mr. S.N. Gupta, Public Prosecutor for the State.
Mr. Abhishek Singh for the complainant-respondent.

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The present criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the accused-petitioners against the order dated 03.02.2003 passed by the Additional Sessions Judge, Hindaun City in Criminal Revision No. 94/2001, whereby the trial Court was directed to take cognizance against the accused-petitioners in Criminal Case No. 574/2001 arising out of F.R. No. 234/2000, P.S. Hindaun city for the offences under Sections 498-A and 201 IPC.

Learned counsel appearing for the accused-petitioners submits that the Revisional Court vide its order dated 03.02.2003 has directed the trial Court to register a case under Sections 498-A and 201 IPC against the accused-petitioners and shall proceed in accordance with the provisions of law.

The main challenge of the petitioners to this direction is that the Revisional Court cannot pass such direction without giving opportunity of being heard to the accused and can only direct to enquire into the matter and remit the case and after holding further enquiry shall proceed further and if a case is made out, then a case can be registered under Sections 498-A and 201 IPC. To this effect, the learned counsel for the petitioners referred Section 398 IPC, more particularly proviso to Section 398 Cr.P.C. which provides that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

Learned counsel for the petitioners also referred sub-clause (2) of Section 401 Cr.P.C. which provides that no order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

Therefore, looking to the facts and circumstances of the instant case the order which has been passed by the Revisional Court is prejudicial to

the accused as the accused have not been given the opportunity of being heard.

Learned counsel for the petitioners also placed reliance on the judgments rendered by this Court in the cases of **Radhey Shyam Vs. State of Rajasthan & Anr., 2000(1) RCD 7 (Raj.), Hazi Mohd. Shafi Vs. State of Rajasthan & Anr. 2002(1) R.Cr.D. 172 (Raj.)** and **Sahi Ram & Ors. Vs. State of Rajasthan, 2002(2) R.C.C. 719.**

Having heard learned counsel for the accused-petitioners, learned counsel for the complainant-respondent as well as learned Public Prosecutor for the State and upon careful perusal of the relevant provisions of law referred before me and the ratio decided by this Court in the aforementioned cases, it is no doubt that the Revisional Court has directed to register a case under Sections 498-A and 201 IPC against the accused-petitioners and after registering case the trial Court may proceed in accordance with the provision of law.

Before registration of the case as the mandatory provisions of statute have not been followed as referred herein above, therefore, in the interest of justice, I deem it proper to quash and set-aside the impugned order dated 03.02.2003 passed by the

Revisional Court i.e. the Additional Sessions Judge, Hindaun City and remit the matter back to the Revisional Court to give opportunity of being heard to the accused-petitioners and after following the due process of law as stipulated under Sections 398 and 401 (2) Cr.P.C., shall proceed further and after giving opportunity of being heard to the accused, if a case is made out then appropriate directions be issued.

With these observations, the revision petition stands disposed of.

(K.S. RATHORE),J.

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